



POLICE DEPARTMENT

July 15, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer James Grimes
Tax Registry No. 919133
Highway Unit 3
Disciplinary Case No. 2012-7315

The above-named member of the Department appeared before me on May 15, 2013, charged with the following:

1. Said Police Officer James Grimes, while assigned to Highway Unit # 1, on or about December 1, 2011, was unprepared at Queens North Traffic Violations Bureau, to wit: while present to provide testimony on a summons said Police Officer issued, said Police Officer did not have a copy of the summons or his applicable Department issued memo book with him in court, resulting in the dismissal of one (1) summons case.

P.G. 211-01, Page 2, Paragraph 11 DUTIES AND CONDUCT IN COURT

The Department was represented by Javier Seymore, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant George Huang as a witness.

Sergeant George Huang

Huang has been a member of the service for about nine years and a sergeant for two years and nine months. He has been assigned to Internal Affairs Bureau Group 27 since August 2011. He investigated the instant case.

Huang testified that he spoke to Sergeant Serrano who was assigned to traffic court (this is actually the Traffic Violations Bureau, hereinafter TVB). Serrano informed him that Respondent was not prepared for court in that he did not have the summons and Activity Log and was not able to testify. Huang was further informed that the TVB judge dismissed the case AD-8, meaning "no recollection." Huang testified that one summons issued to a person named Person A for "no seatbelt," was dismissed.

After completing this investigation Huang interviewed Respondent. At the interview Huang said Respondent stated that he had plenty of time to prepare. However when he went to court he brought the wrong summons with a similar name. Respondent was offered a Command Discipline with a penalty involving the loss of three vacation days. (A copy of the summons was entered into evidence as Court Exhibit 1).

On cross-examination Huang stated that he believed Respondent had 19 cases on the TVB calendar that day and that he was only unprepared on one. Huang stated that out of all the summonses that day there were six guilty, five not guilty and seven no shows.¹

¹ Six guilty, five not guilty and seven "no shows" adds up to 18 cases. Obviously Huang was referring to the other 18, not including the dismissed case.

Huang agreed that Respondent has a lot of activity and that he only investigates officers that go to court unprepared. He agreed that highway officers write many more summonses than regular patrol officers. He did not know the exact number of summonses that Respondent wrote but he said 70 to 90 summonses a month would be a fair assumption.

The offer of the loss of three vacation days on a Command Discipline was made on conferral with his inspector. He said if it had been two motorists the offer would have been five days and three motorists would have been eight days. More than that would have resulted in formal disciplinary charges. This schedule of penalties did not take into account the overall activity of an officer, and the percentage of dismissed cases in relation to total cases was not a consideration. With regard to penalty Huang confers with his supervisor who confers with his superiors.

Huang agreed that he was not at court himself. He agreed that IAB has someone stationed at TVB. Huang agreed that Respondent asked the judge for an adjournment. He agreed that the judge had the power to issue an adjournment. He believed that motorists are routinely granted adjournments when they are unprepared to go forward. Huang agreed that he was notified as a result of the case having been dismissed because the officer was unprepared.

Huang agreed that he had said that Respondent had been notified in advance. He agreed that any time an officer is notified it is his responsibility to be prepared. He did not know if the rule took into account how many cases an officer had to maintain. He agreed that Respondent probably had thousands of files to maintain.

He indicated that Respondent's past record or conviction rate was not taken into account when the three days was offered.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent has been a member of the service for 16 years. He is assigned to Highway Unit 3, where he has served for six years. For the past six months, Respondent has been a part of the Collision Investigation Squad, where he investigates accidents and fatal injuries that occur on the roadways in New York City.² Prior to his service in the Collision Investigation Squad, Respondent's duties for Highway 3 were to conduct routine patrol, test and arrest Driving While Intoxicated offenders, conduct escorts and dignitary protection, and investigate traffic accidents. While in the Highway Unit, he has testified in criminal court 15 to 20 times. Before his assignment to Highway 3, Respondent worked in the Transit Bureau for about a year-and-a-half. Before that, Respondent worked in the Queens Court Section for two years, Transit District 20 for four years, Brooklyn Task Force Transit for one year, and Transit District 11 for one year upon graduating from the Police Academy. Respondent has never been on modified duty, nor has he had prior disciplinary charges.

Respondent testified that as part of his routine patrol duties, he writes about 70 to 90 summonses each month for moving violations. At the end of each day, Respondent

² Respondent referred to his unit as the Accident Investigation Squad, but it has been renamed the Collision Investigation Squad, as per Interim Order No. 7 of 2013, dated April 30, 2013.

turns in two copies of each summons to the desk officer so that they can be scanned and counted. Respondent keeps the "hardcopy," which is the original cardboard copy and a thin blue copy. Because there is no "central index" where Respondent can keep his copy of each summons, he maintains three two-foot long plastic storage units in his locker.

The summonses are stored according to the month and year they were issued.

Respondent picked this system up from "watching somebody else senior to [him] when [he] first got there." Respondent estimated that at any given time he has 3,000 to 4,000 "active" summonses (those that are written but not yet adjudicated). Respondent stores summonses that have already been adjudicated at home in his basement, since there isn't enough room in his locker for them. Respondent stated that he also records in his Activity Log the time, date, summons number, and violation for each summons he writes. Respondent keeps each of his Activity Logs on a shelf in his locker.

Respondent estimated that he testifies at the TVB twice per week, bringing 20 to 30 summonses with him to court each time. Respondent's performance at the TVB is tracked by the Department as part of his evaluation; he testified that he has a 95% conviction rate this year. Respondent's impression from his evaluations is that he is "competent" in court, and has not "need[ed] supervision to testify in Traffic Court or retraining." For each forthcoming appearance at the TVB, Respondent receives a list of summonses at roll call, with the case number and summons number. Respondent signs an acknowledgement that he knows what traffic cases require his testimony. Either during or after work, Respondent retrieves the summonses listed, which usually have varying dates of issuance spanning the last two or three years. Respondent testified that

collating the summonses he will require for an appearance takes approximately 35 to 40 minutes.

For his appearance at the TVB on December 1, 2011, Respondent was provided a list of 19 or 20 summonses about a week and a half beforehand. Respondent used his usual procedure to retrieve these summonses. On December 1, Respondent reported to the TVB at 8:30 a.m., the appointed start time. Respondent said that at some point during the day the judge called for testimony regarding a summons for Person A.

Respondent saw Person A and her attorney in the courtroom. Respondent looked through his stack of summonses, and retrieved "a similar summons, same day, same violation, even on the same roadway." However, this summons was not issued to Person A.

Respondent explained that he had issued a block of five or six similar summonses that day as part of Operation Buckle Up, a federal initiative designed to enforce seatbelt use. For this reason, several summonses had very similar numbers starting "like AAS 10034," with only the last two numbers differentiating each summons. Respondent showed this summons to the judge, and requested an adjournment to retrieve the correct summons. Respondent believed "we are, in Traffic Court, entitled to a reschedule as officers. If something should come up, just for those mere reasons that if something happens you are entitled to a reschedule." Moreover, Respondent has gone to TVB for cases that were adjourned six or even nine times at the motorist's request. On that day, however, the judge did not grant an adjournment. According to Respondent, the judge said, "[A] simple violation like a seatbelt, I'm not going to have this poor motorist come back on another date for this." Respondent also testified that he did not bring Activity Logs corresponding to any of the summonses for that day, since it would be burdensome to

search for the correct Activity Logs covering the two to three year period of the list of summonses. Respondent said that bringing these logs would not be expected of him at Highway 3 due to the "sheer volume that we do."

When Respondent applied for the Collision Investigation Squad with his captain's recommendation, his transfer was delayed due to pending charges. At some point, Respondent was offered a Schedule B Command Discipline with a loss of three vacation days. Respondent explained that he turned down the offer because three vacation days is equivalent to approximately \$900.00, and he felt that this penalty was "abusive and excessive" for forgetting to bring one summons to court.

On cross-examination, Respondent clarified that the incorrect summons he brought to the TVB that day was issued to [REDACTED]. Respondent explained that it was not the similarity of the two names that led to Respondent bringing the wrong summons, but that "the summons number [was] very similar. The date of the violation [was] the same," and that he "made a mistake." When Respondent returned to his command, he found Person A's summons in the file box in his locker. Respondent also explained that copies of his Activity Log are usually presented to the District Attorney for criminal cases, but for traffic cases this is not the usual practice. Respondent had never previously brought an Activity Log (or a copy thereof) to testify in TVB. According to Respondent, the Activity Log has no bearing on a guilty or not guilty conviction. Instead, Respondent relies upon the summons, which contains additional details such as the weather, traffic conditions, and lanes. These details are not captured in the Activity Log, and so Respondent needs the summons to "totally recollect [his] memory."

Upon further questioning, Respondent confirmed that of the cases he testified in on December 1, 2011, six cases resulted in guilty verdicts, five had not guilty verdicts, and seven were "no shows." Respondent explained that in a given traffic stop he will issue two or three summonses for various violations. TVB judges will often exercise their discretion and find defendants not guilty for some charges in order to "give the motorist a little bit of a break." Respondent recalled that each not guilty verdict that day was entered according to that practice, so the motorist was found guilty of at least one charge in every case that he testified in that day.

FINDINGS AND ANALYSIS

Respondent is charged in one specification with not having a copy of a summons he issued and his Department issued Activity Log with him in traffic court resulting in the dismissal of one summons.

The facts are not in dispute. Respondent did not have his copy of one summons with him when he went to the Traffic Violation Bureau (TVB) in Queens on December 1, 2011. It is not in dispute that he requested an adjournment to obtain the summons but the hearing officer denied his application and dismissed the case. It is also not in dispute that he had 19 summonses on the calendar that day and that no other case was dismissed because he failed to bring the appropriate material to TVB. Indeed it is agreed that Respondent testified in other cases at TVB that day and obtained convictions.

Respondent stated that he has a 95 % conviction rate. He also stated the cases that were dismissed on the day in question were the result of a motorist being convicted on at least one of his or her summonses and the others dismissed as covered by the

conviction. He noted that as long as the motorist is convicted of at least one summons the case counts as a conviction.

Respondent argued that at the time he was a very active Highway officer issuing on average between 70 and 90 summonses each month for the period from July 2007 to December 2012 when he was doing traffic enforcement. He testified that he generally appeared at TVB two times each week with 20-30 cases each time he appeared. He noted that he is required to maintain all of his summonses and Activity Logs and described the elaborate system he developed to keep track of the many thousands of summonses he had issued over time.

Respondent also indicated that when he is scheduled to appear at TVB the summonses on any given day could cover a span of three years because motorists frequently get adjournments including multiple adjournments on the same case.

Respondent admits that he made an error. In preparing for court that day he correctly pulled 18 summonses from his files. He said the one summons he missed was for driving without a seatbelt. The summons he erroneously pulled for that case was issued the same day for the same offense and had a similar number. He contends that this is not misconduct and that is why he declined to accept a Command Discipline with the loss of three vacation days, worth he said, about \$900.00, (the Assistant Department Advocate is now seeking the loss of four vacation days).

The issue of whether conduct is an error or actionable misconduct does not come up very often. In a published decision from the Office of Administrative Trials and Hearings (OATH) the court noted that, "it is a fundamental tenet of civil service law that all public employees are obliged to perform their assigned duties competently and

conscientiously and, where their performance is negligent, they can be disciplined.”

However that court also noted: “[N]ot every error rises to the level disciplinable misconduct,” (*Transit Authority v. Frost* OATH Index No. 1598/98 [August 26, 1998]). Unfortunately the case itself, (which found the Respondent guilty of misconduct) does not provide a bright line rule.

In this case Respondent had ample notice of the impending court date and ample opportunity to check to make sure he had the right summonses. The Department has a right to consider this failure misconduct. Accordingly Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on April 15, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been a highly productive summons officer. Respondent has an unblemished disciplinary record. There is no indication that he has ever been subject to any form of discipline with regard to his handling of TVB cases. He claims to have a 95% success rate at TVB and that claim is unchallenged. He is obviously concerned about his effectiveness at TVB. Under the totality of these circumstances the error Respondent made that day is both out of character and minor.

There is another, significant, mitigating factor and that is the conduct of the TVB hearing officer. Respondent was present at TVB and prepared on many cases. He gave testimony in some of those cases which resulted in findings of guilt against motorists.

In spite of that on the one summons in the one case where Respondent asked for an adjournment the hearing officer denied that request and summarily dismissed the case. There appears to be no question that Respondent had the summons in question in his files and that had he been given an opportunity to return to TVB with it, he could have and would have.

It must be noted that the charge does not simply involve Respondent's failure to be prepared but the fact that his lack of preparedness resulted in the dismissal of the case. The dismissal of the case was a discretionary act on the part of the hearing officer.

I have presided over trials and hearings in numerous forums for over 25 years. I know that it is hardly unusual for a party to have to request an adjournment because he or she has forgotten to do something or to bring something needed to court before a case can move forward. Adjournments occur all the time, in every forum I have been in, including this one, for that reason, on requests by attorneys for both sides.

What is unusual is to deny a request for an adjournment and to dismiss a case. If the officer was known to the hearing officer and had a reputation for failing to bring necessary documents to TVB or for wasting court time generally, such a dismissal might be merited. There is no evidence that this officer behaved that way ever. Indeed the evidence is to the contrary. On the other hand there is testimony before this court that at TVB motorists are regularly granted adjournments regardless of merit.

In any other forum a perfunctory dismissal under these circumstances might well be deemed to have been arbitrary and capricious and subject to reversal. However Respondent has no standing to bring an action appealing the TVB hearing officer's decision.³ In this regard it should be noted that I have heard testimony that motorists are routinely granted adjournments with or without explanation.

Respondent is now the one potentially subject to penalty, indeed a penalty well beyond that faced by the motorist, and in a sense Respondent is being deprived of due process without a remedy.

This Court is amply aware of the fact that sloppy police practices regarding appearances at TVB and other summons forums can conceal corruption. Vigilant management is both necessary and appropriate, (it must be noted that there is not the slightest intimation of corruption in this case). But officers, like everyone else, do make errors. In this instance the error resulted in a dismissal because the hearing officer denied what would otherwise be a legitimate request for an adjournment.

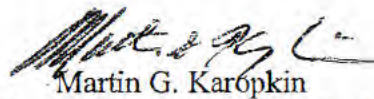
The Department has recommended a penalty involving the loss of four vacation days. This is higher than the three day penalty Respondent declined at the Command Discipline stage. No justification was given for the enhanced penalty recommendation which therefore appears to be based solely on Respondent's decision to challenge the disciplinary action.

Considering the totality and circumstances of this case as well as Respondent's

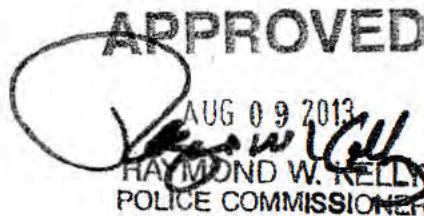
³ I also take judicial notice of the fact that the appeal form available on-line at the TVB website allows a motorist to appeal a default judgment. Clearly this is not a level playing field.

history with this Department it is recommended that Respondent receive a Reprimand as penalty in this matter.

Respectfully submitted,



Martin G. Karopkin
Deputy Commissioner Trials

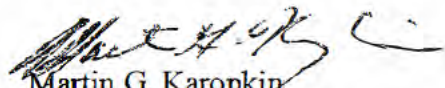
APPROVED
AUG 09 2013

RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JAMES GRIMES
TAX REGISTRY NO. 919133
DISCIPLINARY CASE NO. 2012-7315

Respondent received an overall rating of 4.0 "Highly Competent" on his last three annual performance evaluations. [REDACTED] for
fo [REDACTED]

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials